



**FEDERAL ELECTION COMMISSION**  
WASHINGTON, D.C. 20463

**John F. Dascoli, Esq.**  
**The Segal Law Firm**  
**810 Kawawha Boulevard, East**  
**Charleston, West Virginia 25301**

**SEP 27 2008**

**RE: MUR 5664**  
**International Union of Painters and**  
**Allied Trades District Council 53**  
**Clarence E. Mitchell, Sr.**

**Dear Mr. Dascoli:**

On June 20, 2005, the Federal Election Commission notified your clients, the International Union of Painters and Allied Trades District Council 53 (the "District") and Clarence E. Mitchell, Sr., of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on September 19, 2004, found that there is reason to believe that the District and Mr. Mitchell violated 2 U.S.C. § 441b(a), a provision of the Act. The Factual and Legal Analyses, which formed the bases for the Commission's findings, are attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

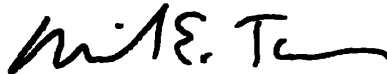
29044222571

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact J. Cameron Thurber, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Michael E. Toner  
Chairman

**Enclosures**

Factual and Legal Analysis for International Union of Painters and Allied Trades District  
Council 53  
Factual and Legal Analysis for Clarence E. Mitchell, Sr.

29044222572

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3  
4  
5 **RESPONDENT:** Clarence E. Mitchell, Sr. **MUR: 5664**

6  
7 **I. INTRODUCTION**

8 This matter was generated by a complaint filed with the Federal Election Commission  
9 ("Commission") by Gerald L. McMillian. See 2 U.S.C. § 437g(a)(1). For the reasons set forth  
10 below, the Commission finds reason to believe that the Clarence E. Mitchell, Sr. violated  
11 2 U.S.C. § 441b(a) by consenting to prohibited in-kind contributions from a labor organization.

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 The International Union of Painters and Allied Trades District Council 53 ("District") in  
15 West Virginia is a state-level subdivision of the International Union of Painters and Allied  
16 Trades ("IUPAT"). The District is further subdivided into a number of local unions, each of  
17 which elects one member every three years to be the local union's business representative to  
18 work full-time at District headquarters as a paid District employee. Supplemental Complaint at  
19 1; see IUPAT website, [www.iupat.org/about/dcs\\_ius.html](http://www.iupat.org/about/dcs_ius.html).

20 Complainant Gerald McMillian, a former long-time employee of the District, alleges that  
21 the District and its Business Manager/Financial Secretary, Clarence E. Mitchell, Sr., violated  
22 provisions of the Federal Election Campaign Act of 1971, as amended, concerning prohibited  
23 in-kind contributions from a labor organization to the John Kerry/John Edwards  
24 ("Kerry/Edwards") presidential campaign. McMillian states he was elected as his local union's  
25 business representative to the District six times and served in this position for twenty years.  
26 Supplemental Complaint at 1. At the time of the alleged violations, as "Business

1 **Manager/Financial Secretary” of the District, Mitchell was McMillian’s direct supervisor.**

2 **Affidavit of Clarence E. Mitchell, Sr., July 20, 2005, at ¶ 1; Complaint at 1.**

3 **McMillian alleges that starting in March 2004, the District became very involved in the**  
4 **Kerry/Edwards presidential campaign. Complaint at 1. He asserts that he received a list of**  
5 **political events in his area and alleges that Mitchell directed him and other District employees to**  
6 **participate in the listed events during work hours. *Id.* at 2. According to McMillian, for any**  
7 **pro-Kerry/Edwards or anti-Bush rallies within driving distance, they were to gather “as many**  
8 **[union] members as the union car would hold and put them in our black and gold tee shirts**  
9 **which endorsed Kerry and attend these events.” *Id.* Additionally, McMillian claims he and**  
10 **other District employees “were required to do precinct walks during the evenings and**  
11 **weekends” and assist with pro-Kerry/Edwards mass mailings to District members. *Id.* Mitchell**  
12 **allegedly told District employees not to document over 40 hours of work a week (*i.e.*, even if**  
13 **participation in political activities boosted their work hours above 40) and that weekly work**  
14 **reports showing political activities would be rejected; instead, Mitchell allegedly instructed that**  
15 **such activities should be classified as “educating our membership.” *Id.***

16 **In a supplement to his complaint, McMillian states that in February 2005, he read a copy**  
17 **of the conciliation agreement in MUR 5268 (KSDCC) and was concerned that he and other**  
18 **District employees might have committed violations of the federal election laws in connection**  
19 **with the political activities discussed above. *See* Supplemental Complaint at 1. He claims that**  
20 **after he confronted Mitchell with his concerns in April 2005, and told Mitchell that he planned**

1 to file a complaint with the Commission, he experienced various repercussions.<sup>1</sup> *Id.*

2 In response, Mitchell and other District employees submitted affidavits that specifically  
3 contradict McMillian's allegations. The affidavits state that while employees of the District  
4 took part in political activities, and some affiants received information about "upcoming  
5 political events," they understood that any participation was voluntary and to be done on  
6 personal time with their own vehicles. Several of the affidavits flatly assert that McMillian's  
7 allegations are "false."<sup>2</sup>

8 In attempting to show that, contrary to McMillian's claim, Mitchell would not reject work  
9 reports mentioning political activity, his response also provided four of McMillian's weekly  
10 reports referencing his participation in political activities. For the week of April 3, 2004,  
11 McMillian's weekly report states, "I seen [sic] a large crowd of people making Mr. Bush  
12 welcome." McMillian's weekly report for September 11, 2004 mentions his attending a rally  
13 with "8 Black Shirts." His report for the week of September 18, 2004 states, "called members  
14 for Edwards Rally at Tri-State Airport" and "Attended Edwards Rally." Finally, his weekly

<sup>1</sup> McMillian states, "I have been taking a thumping since I filed the F.E.C. Complaint [sic]." Supplemental Complaint at 3. He provided documents showing that he was twice brought up on charges for violating the IUPAT constitution, and sanctioned both times. He also states he was removed as a trustee from the District's Health and Welfare Plan, warned of a possible audit of activities he managed, threatened with physical violence by other District employees, given an assignment that would have imposed a hardship, and finally resigned from the District "due to extreme Duress and Harassment [sic]." *Id.* He states he "felt [his] resignation was necessary to avoid possible physical harm and mental anguish" and that "several agencies" with whom he spoke "labeled [his] resignation as a constructive discharge." *Id.* In a supplemental response, the District provided a report by the state unemployment commission denying McMillian unemployment benefits because he "left work voluntarily without good cause involving fault on the part of the employer."

<sup>2</sup> McMillian claims that another District employee told him that "Mr. Mitchell had ordered all the District Council 53 Servicing Representatives/Organizers to report to [the union's attorney's office] and sign a document which stated that all of Gerald McMillians [sic] statements that he made to the FEC were not true." Supplemental Complaint at 3. In addition, McMillian maintains that after District employees were interviewed by the union's attorney about his FEC complaint, they told McMillian that information they conveyed that was not favorable to the District might "not be included" in the District's response to the complaint. Supplemental Complaint at 3.

1 report for October 24, 2004 references "very positive results on walk," which may refer to a  
2 precinct walk.

3 **B. Analysis**

4 The complaint alleges that Clarence E. Mitchell, Sr. consented to in-kind contributions  
5 from a labor organization, to the campaign of a Federal candidate by directing employees to  
6 participate in campaign events and conceal their participation by falsely characterizing their  
7 participation on work reports as member education. Complainant has also alleged reprisals for  
8 filing a complaint with the Commission, and the complainant can point to adverse job actions  
9 that, while not necessarily attributable to his filing the complaint, are consistent with his  
10 allegations. If the facts as alleged are true, Mitchell may have violated 2 U.S.C. § 441b(a).  
11 Notably, each of the key factual allegations, sworn to by complainant and purportedly based on  
12 first-hand experience, are denied by Mitchell and others through sworn statements – by Mitchell  
13 who purportedly directed the activity and cover-up, his assistant, and nine others who, like  
14 complainant, reported to Mitchell during the relevant period. There is no way to resolve these  
15 conflicting accounts without an investigation. This is particularly so in this case where the  
16 complainant has alleged reprisals by the employer for filing a complaint with the Commission,  
17 and the complainant points to adverse job actions that, while not necessarily attributable to his  
18 filing the complaint, are consistent with his allegations.

19 Therefore, there is reason to believe that Clarence E. Mitchell, Sr. violated 2 U.S.C.  
20 § 441b(a) by consenting to prohibited in-kind contributions from a labor organization.

29044222576

1 **FEDERAL ELECTION COMMISSION**

2  
3 **FACTUAL AND LEGAL ANALYSIS**

4  
5 **RESPONDENT:** International Union of Painters and MUR: 5664  
6 Allied Trades District Council 53  
7

8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election Commission  
10 ("Commission") by Gerald L. McMillian. See 2 U.S.C. § 437g(a)(1). For the reasons set forth  
11 below, the Commission finds reason to believe that the International Union of Painters and  
12 Allied Trades District Council 53 violated 2 U.S.C. § 441b(a) by making prohibited in-kind  
13 contributions from a labor organization.

14 **II. FACTUAL AND LEGAL ANALYSIS**

15 **A. Factual Background**

16 The International Union of Painters and Allied Trades District Council 53 ("District") in  
17 West Virginia is a state-level subdivision of the International Union of Painters and Allied  
18 Trades ("IUPAT"). The District is further subdivided into a number of local unions, each of  
19 which elects one member every three years to be the local union's business representative to  
20 work full-time at District headquarters as a paid District employee. Supplemental Complaint at  
21 1; see IUPAT website, [www.iupat.org/about/dca\\_lus.html](http://www.iupat.org/about/dca_lus.html).

22 Complainant Gerald McMillian, a former long-time employee of the District, alleges that  
23 the District and its Business Manager/Financial Secretary, Clarence E. Mitchell, Sr., violated  
24 provisions of the Federal Election Campaign Act of 1971, as amended, concerning prohibited  
25 in-kind contributions from a labor organization to the John Kerry/John Edwards  
26 ("Kerry/Edwards") presidential campaign. McMillian states he was elected as his local union's

29044222577

1 business representative to the District six times and served in this position for twenty years.

2 Supplemental Complaint at 1. At the time of the alleged violations, as "Business

3 Manager/Financial Secretary" of the District, Mitchell was McMillian's direct supervisor.

4 Affidavit of Clarence E. Mitchell, Sr., July 20, 2005, at ¶ 1; Complaint at 1.

5 McMillian alleges that starting in March 2004, the District became very involved in the  
6 Kerry/Edwards presidential campaign. Complaint at 1. He asserts that he received a list of  
7 political events in his area and alleges that Mitchell directed him and other District employees to  
8 participate in the listed events during work hours. *Id.* at 2. According to McMillian, for any  
9 pro-Kerry/Edwards or anti-Bush rallies within driving distance, they were to gather "as many  
10 [union] members as the union car would hold and put them in our black and gold tee shirts  
11 which endorsed Kerry and attend these events." *Id.* Additionally, McMillian claims he and  
12 other District employees "were required to do precinct walks during the evenings and  
13 weekends" and assist with pro-Kerry/Edwards mass mailings to District members. *Id.* Mitchell  
14 allegedly told District employees not to document over 40 hours of work a week (*i.e.*, even if  
15 participation in political activities boosted their work hours above 40) and that weekly work  
16 reports showing political activities would be rejected; instead, Mitchell allegedly instructed that  
17 such activities should be classified as "educating our membership." *Id.*

18 In a supplement to his complaint, McMillian states that in February 2005, he read a copy  
19 of the conciliation agreement in MUR 5268 (KSDCC) and was concerned that he and other  
20 District employees might have committed violations of the federal election laws in connection  
21 with the political activities discussed above. *See* Supplemental Complaint at 1. He claims that

2904422578



1 after he confronted Mitchell with his concerns in April 2005, and told Mitchell that he planned  
2 to file a complaint with the Commission, he experienced various repercussions.<sup>1</sup> *Id.*

3 In response, the District submitted affidavits from eleven District employees, including  
4 Mitchell, that specifically contradict McMillian's allegations.<sup>2</sup> The affidavits state that while  
5 employees of the District took part in political activities, and some affiants received information  
6 about "upcoming political events," they understood that any participation was voluntary and to  
7 be done on personal time with their own vehicles. Several of the affidavits flatly assert that  
8 McMillian's allegations are "false."<sup>3</sup>

9 In attempting to show that, contrary to McMillian's claim, work reports mentioning  
10 political activity were not rejected, the District also provided four of McMillian's weekly reports  
11 referencing his participation in political activities. For the week of April 3, 2004, McMillian's  
12 weekly report states, "I seen [sic] a large crowd of people making Mr. Bush welcome."  
13

<sup>1</sup> McMillian states, "I have been taking a thumping since I filed the F.E.C. Complaint [sic]." Supplemental Complaint at 3. He provided documents showing that he was twice brought up on charges for violating the IUPAT constitution, and sanctioned both times. He also states he was removed as a trustee from the District's Health and Welfare Plan, warned of a possible audit of activities he managed, threatened with physical violence by other District employees, given an assignment that would have imposed a hardship, and finally resigned from the District "due to extreme Duress and Harassment [sic]." *Id.* He states he "felt [his] resignation was necessary to avoid possible physical harm and mental anguish" and that "several agencies" with whom he spoke "labeled [his] resignation as a constructive discharge." *Id.* In a supplemental response, the District provided a report by the state unemployment commission denying McMillian unemployment benefits because he "left work voluntarily without good cause involving fault on the part of the employer."

<sup>2</sup> The District submitted two responses. One response was received on July 22, 2005 following the initial complaint, and another was received on December 15, 2005 after McMillian filed the supplemental complaint. The second response enclosed additional affidavits concerning the original allegations that were executed in early August 2005, but were not forwarded to the Commission until four months later with the supplemental response.

<sup>3</sup> McMillian claims that another District employee told him that "Mr. Mitchell had ordered all the District Council 53 Servicing Representatives/Organizers to report to [the union's attorney's office] and sign a document which stated that all of Gerald McMillians [sic] statements that he made to the FEC were not true." Supplemental Complaint at 3. In addition, McMillian maintains that after District employees were interviewed by the union's attorney about his FEC complaint, they told McMillian that information they conveyed that was not favorable to the District might "not be included" in the District's response to the complaint. Supplemental Complaint at 3.

1 McMillian's weekly report for September 11, 2004 mentions his attending a rally with "8 Black  
2 Shirts." His report for the week of September 18, 2004 states, "called members for Edwards  
3 Rally at Tri-State Airport" and "Attended Edwards Rally." Finally, his weekly report for  
4 October 24, 2004 references "very positive results on walk," which may refer to a precinct walk.

5 **B. Analysis**

6 The complaint alleges in-kind contributions from a labor organization, to the campaign of  
7 a Federal candidate by directing employees to participate in campaign events and conceal their  
8 participation by falsely characterizing their participation on work reports as member education.  
9 Complainant has also alleged reprisals by the employer for filing a complaint with the  
10 Commission, and the complainant can point to adverse job actions that, while not necessarily  
11 attributable to his filing the complaint, are consistent with his allegations. If the facts as alleged  
12 are true, the District and others may have violated 2 U.S.C. § 441b(a). Notably, each of the key  
13 factual allegations, sworn to by complainant and purportedly based on first-hand experience, are  
14 denied by the respondents through sworn statements – by the supervisor who purportedly  
15 directed the activity and cover-up, his assistant, and nine others who, like complainant, reported  
16 to this supervisor during the relevant period. There is no way to resolve these conflicting  
17 accounts without an investigation. This is particularly so in this case where the complainant has  
18 alleged reprisals by the employer for filing a complaint with the Commission, and the  
19 complainant points to adverse job actions that, while not necessarily attributable to his filing the  
20 complaint, are consistent with his allegations.

21 Therefore, there is reason to believe that the International Union of Painters and Allied  
22 Trades District Counsel 53 violated 2 U.S.C. § 441b(a) by making prohibited in-kind  
23 contributions from a labor organization.

29044222580